for an extension of time to permit the Appeal being heard.

Section 37 of the Federated Malay States Court Enactment is as follows :—

> "The Court of Appeal may in its discretion, on the application of any person desirous of appealing who may be debarred from so doing by reason of his not having observed some formality or some requirement of this Enactment, permit an appeal upon such terms and with such directions as it may consider desirable in order that substantial justice may be done in the matter."

In this matter it is not the Applicant who has failed to observe some formality or requirement of the Courts Enactment, but the Public Prosecutor who has failed to sign and file his certificate as required by section 45A(i) of the Enactment. Accordingly, in view of the specific word "his" in section 37 set out above we are unable to accede to this application.

We add, that we have come to this conclusion reluctantly because we understand that the reason why the District Judge cleared the Court for a short interval at the trial was because one prosecution witness stated that she was afraid to identify the Applicant as a robber on account of her fear of certain Chinese present in Court as part of the public at the trial. With our knowledge that intimidation of this kind is not uncommon in this country at the present time it is a matter for regret that we have been unable to decide this particular question.

It is no fault of the Public Prosecutor that he did not sign and file his certificate within the prescribed period, and we suggest that the Courts Enactment should be amended to give greater freedom of action to him in granting certificates under section 45A(i) of the Courts Enactment.

Application Dismissed.

JOHORE PARA RUBBER COMPANY LTD. v. REGISTRAR OF COMPANIES, MALAYAN UNION.

[Orig. Civil Juris. (Pretheroe, Ag. C.J.) Feb. 27, 1948]
[K.L. — Companies Application No. 12 of 1947]

Companies Ordinance 1940, Sections 80 and 81 — Registration of charge on land under Companies Ordinance — Johore Land Enactment Sections 63 and 65 — Charge on land only comes into existence at the time registration is effected.

In this case the only point at issue was the question of law as to when, for the purposes of sub-section (1) of Section 80 of the Companies Ordinance 1948, a charge on land is created. The charge in this case, a charge on land in Johore, was executed on the 15th of August 1947 and was registered at Johore Bahru on the 9th of September 1947. On the 9th of September 1947 a copy of the charge was sent to the Registrar of Companies for registration under Section 81 of the Companies Ordinance 1940. The Registrar of Companies refused to register the charge claiming that he was precluded from doing so by Section 80 (1) of the Companies Ordinance, 1940, which requires **inter alia** that a charge should be submitted for registration within twenty one days of its creation.

Held, that by the law of the State of Johore which applied to the charge in this case, the charge was created on the day it was registered in the Registry at Johore Bahru, that is, on the 9th of September 1947, and as a copy of the charge was addressed to the Registrar of Companies by post the same day and was received by him within the period of twenty one days, the Registrar of Companies should register the charge, if it provided all the information required by the Ordinance.

COMPANIES APPLICATION.

F. G. Charlesworth for the Plaintiff.

Shields (Crown Counsel) for the Defendant.

Pretheroe, Ag. C. J. : — This is an unusual case in that there is no dispute whatever regarding the facts, and there is only one point of law in issue, viz: when, for the purposes of sub-section (1) of section 80 of the Companies Ordinance, 1940, is a charge on land created?

The facts of the case are as follows. The Johore Para Rubber Company Limited (hereinafter referred to as "the Company") applied to the Industrial Rehabilitation Finance Board for a loan of $15,000 for the purpose of rehabilitating its estates. The Board approved the loan, but before making the advance it required the Company to execute an agreement and also a document referred to by the Board as "a memorandum of charge". This memorandum of charge was executed on behalf of the Company on the 15th August, 1947, and was despatched to the Board that same day. It was returned, together with the agreement duly sealed by the Board, on or about the 15th of September, 1947. The land, which is the subject of the charge, is situate in the State of Johore, so, in compliance with the law of that State, the Company submitted the charge to the Registrar of Titles of that State for registration, and the charge was duly registered at the Registry at Johore Bahru on the 9th September, 1947. On the same day the Company despatched by post a copy of the charge to the Registrar of Companies for registration under section 81 of the Companies Ordinance, 1940. The Registrar was quite willing to enter particulars of the charge in the register but, after taking legal advice on

the point, decided that as the charge was created on the day it was executed on behalf of the Company viz: the 15th August, he was precluded by the provision appearing in sub-section (1) of section 80 of the Companies Ordinance, 1940, from doing so. That sub-section requires, *inter alia,* that a charge shall be submitted for registration within twenty-one days of its creation. On its side the Company contended that the charge was created when it was registered in the Registry at Johore Bahru i.e. the 9th September, 1947, and that it was submitted to the Registrar of Companies within the statutory period of twenty-one days. The Company failed to convince the Registrar of the correctness of its submission, so came to this Court for a decision under section 45 of the Specific Relief Enactment.

When considering the point of issue one governing principle must always be borne in mind viz: that on any point concerning the nature, or the date of creation, of a charge on land, it is necessary to turn to the land law of the State wherein the land is situated. In this case the law is to be found in Part V of the Land Enactment of the State of Johore. The relevant portion of section 63 of that Enactment provides as follows :—

> No land shall be capable of being transferred, transmitted, mortgaged, charged or otherwise dealt with except in accordance with the provisions of this Part; and every attempt to transfer, transmit, mortgage, charge or otherwise deal with the same, except as aforesaid, shall be null and void and of no effect;.....

And section 65 of the Enactment provides as follows :—

> No instrument, until registered in manner hereinbefore described, shall be effectual to pass any land, or any interest therein, or render such land liable as security for the payment of money; but upon the registration of any instrument in manner hereinbefore prescribed, the land specified in such instrument shall pass, or, as the case may be, shall become liable as security in manner and subject to the agreements, conditions and contingencies set forth and specified in such instrument; but so that nothing contained in this Enactment shall take away or affect the jurisdiction of the Court on the ground of fraud.

These sections make it abundantly clear that in the State of Johore, whatever agreement may be executed, and by whatsoever name the document evidencing the agreement may be called, no land can be charged until the transaction is registered in con formity with the provisions of Part V of the Land Enactment. Furthermore, for the purposes of that Enactment any attempt to create a charge on land except by registration "is null and void and of no effect", though doubtless for other purposes the execution of such a document would serve to create certain rights and liabilities. Now as a charge on land in the State of Johore can only be created in one manner i.e. by registration, it is clear that such charge can only come into existence at the time registration is effected.

In the course of his argument counsel for the Registrar of Companies submitted that sub-section (4) of section 80 of the Companies Ordinance was included in the Ordinance for the specific purpose of meeting cases similar to the present one. That sub-section provides as follows :—

> Where a charge is created in or out of the Colony and further proceedings are necessary to make the charge valid and effectual according to the law of the country in which the property is situate, the instrument by which the charge is created or evidenced may be sent for registration under this section before such further proceedings have been completed.

That sub-section deals with a charge which has been created but not perfected, and permits registration before the charge is perfected. That sub-section will doubtless be effective in proper circumstances, but here the dominating factor is the land law of the State of Johore and, as already stated, that law provides in effect that a charge shall only come into being upon due registration thereof. Before such registration there is no charge and consequently nothing is perfect. Thus, in my opinion, sub-section (4) of section 80 has no application to the present case.

On the issue therefore I decide that the charge was created on the day it was registered in the Registry at Johore Bahru i.e. the 9th of September 1947. As a copy of the charge was addressed to the Registrar of Companies by post the same day, it is almost certain that it was "received by the Registrar" within the period of twenty-one days. If this was in fact the case, and provided that the document provides all the information required by the Ordinance, I direct that the Registrar of Companies do register the charge with effect from the day the copy thereof was received by him. Costs to the Applicant.

Order Accordingly.

LOKE YUNG HONG v. SHANGHAI FURNITURE CO. AND ANOTHER.

[Civ. App. (Pretheroe, Ag. C.J., Federation of Malaya, Murray-Aynsley, C.J., Singapore and Evans, J.) March 5, 1948]

[K.L. — Civ. App. No. 21 of 1947]

Rent and Charged Land (Restriction) Enactment 1940 — Assignment of tenancy by tenant — Breach of condition of tenancy — Landlord and tenant.